

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

OREGON STEEL MILLS, INC.

Employer

and

Case 36-RC-6168

NORTHWEST METAL PRODUCERS
ASSOCIATION

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Oregon Steel Mills, Inc., operates a steel manufacturing and processing facility located in Portland, Oregon (herein "Facility"). The Petitioner, Northwest Metal Producers Association, filed a petition with the National Labor Relations Board seeking to represent approximately 350¹ employees in a production and maintenance ("P&M") unit employed by the Employer at its Facility.²

¹ The petition notes approximately 350 employees are in the unit sought by the Petitioner. At the end of the hearing, the number of 480 is mentioned. Other than that, there is no other information to determine a more precise number. The number is probably between 350 and 480.

² The parties stipulated to the inclusion of the following employee classifications in the following departments. In the steel making department:

Bricklayer; casting helper; charge, furnace, ladle, North Yard, South Yard, slab/melt, and lead crane operators; electricians; lead electricians; equipment operator—scrap; first, second, LMF and general helpers; hand scarfers; ladle tenders; LMF operators; maintenance generalists; melt helper; milling machine operators; millwrights; lead millwright; casting, cleaner/coater, LMF/degasser and lift truck operators (including the slab yard lift truck operator); melt department; designer; drafter; slab burners; and operating and process technicians.

In the rolling department:

North Yard crane operator; electricians; lead electricians; finish relief and heater employees; hot bed markers; HVAC technicians; instrument repair technicians; leveler/down coiler; maintenance generalist; mill relieves I; millwrights; lead millwrights; operating technician I, II, and IIIs; operators IV-Hi; changing gantry, leveler, end shear, rotary edge shear and parting shear operators; operator/mechanic; designer and quality inspectors.

In the Shipping department:

Clerk rail scale; coating applicator-wheel; crane chaser-shipping; crane operator/chaser retail-shipping; crane operator-shipping; crane operator-wheelabrator; equipment operator-scrap; switch crew; loader-shipping; material handler-coil yard; plate burners; quality inspectors; relief loader-shipping; and utility person-transportation.

A pre-election hearing was conducted in connection with the petition. At this hearing and in the parties' post hearing briefs, the parties raised two primary issues. The first issue concerns whether the Petitioner falls within the National Labor Relations Act's definition of a labor organization. The second issue involves whether six job classifications should be included in the unit. However, the record raises a third issue regarding the status of foremen employed by the Employer at its Portland facility.

I have considered the evidence presented at the hearing and the parties' briefs relating to the three issues noted above. Regarding the Petitioner's labor organization status, I find that the Petitioner is a labor organization as that term is defined in Section 2(5) of the Act. With respect to the unit placement issue, I have concluded that four of the six classifications, covering the plant clericals, should be included in the unit while the remaining two classifications, sample burners and mechanical testers, should be excluded from the unit. On the issue of the status of the foreman, I find that they should be permitted to vote subject to challenge.

In section I of this Decision, I will address the status of the Petitioner as a labor organization. In section II, I will address the unit placement issue of the six disputed classifications. In section III, I will discuss the foremen issue. My conclusions and findings are found in section IV and my direction of election is set forth in section V.

I. Petitioner's Labor Organizational Status

The record reveals that employees participate in the Petitioner's organization. In particular, the Petitioner conducted meetings in which employees actively participated, including organizational meetings where, in one

In the central services/stores department:

Carpenter/painters; stores clerk; apprentice electrician; machinist; lead machinist; maintenance generalist; material handler-maintenance; millwrights; millwrights apprentices; lead millwrights; and operator/mechanic.

In the heat treating department:

Electrician; heat treater/operator tech III; heat treat loaders/material handler; millwrights; production coordinator; and quality inspector.

In the environmental safety department:

Environmental specialist and safety technician.

The parties also stipulated to the exclusion of the following employee classifications:

Department managers and supervisors, including general supervisors, coordinator, coil yard production coordinator, shipping coordinator, maintenance coordinator, mechanical maintenance coordinator, electrical, all accounting department employees, administrative department employees, employee resource department employees, all professional employees, all sales and marketing department employees, ICS, production planning purchasing/traffic and control department employees, quality assurance employees, technical supply/support coordinator, technical entry coordinator, quality control records administrator and all office clerical employees.

The parties also stipulated to the inclusion of the 36 temporary agency employees.

such meeting, a committee comprised of employees authorized the Petitioner to file a petition seeking representation of the Employer's employees.

The Petitioner has a proposed constitution and by-laws that indicate the Petitioner's purpose is to represent employees in bargaining for terms and conditions of employment. Further, the Petitioner's May 9, 2002, statement to employees states that its purpose is to represent employees for "the purpose of collective bargaining on wages (benefits), hours and working conditions." This stated purpose is also evidenced in its authorization cards, some of which were submitted into the record and served as the foundation for its showing of interest in this matter.

The Employer asserts that the Petitioner is not a labor organization because it lacks officers, formal structure, a bank account, and only had a proposed constitution and by-laws at the time of the hearing in this matter. The Employer also contends that the Petitioner also has no office, representative, telephone number or property. The Petitioner contends that it falls within the definition of a labor organization as that term is defined in Section 2(5) of the Act, which states:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

To fall within this definition, the National Labor Relations Board (Board) has held that employees must participate in the labor organization and it must exist for the purpose of dealing with employers. **Alto Plastics Mfg. Corp**, 136 NLRB 850, 851-852 (1962). It is well settled that the existence of elected officers and a constitution or bylaws is not determinative in analyzing whether an organization or an association is a labor organization within the meaning of the Act. **Yale New Haven Hospital**, 309 NLRB 363 (1992); **Armco, Inc.**, 271 NLRB 350 (1984); **Steiner-Liff Textile Products Co.**, 259 NLRB 1064 (1982). Nor is labor organization status based on proof of specific instances that the organization has dealt with an employer. **Armco, Inc.**, supra at 350; **Steiner-Liff Textile Products Co.**, supra at 1065. Rather, the intent of the organization and not what activities the organization actually performs is critical in ascertaining labor organization status, regardless of the progress of the organization's development. **Edward A. Utlaut Memorial Hospital**, 249 NLRB 1153, 1160 (1980).

Although at the time of the hearing the Petitioner had no constitution, bylaws, office, mechanism for collecting dues, established criteria for accepting members, dues structure, bank account, previous collective bargaining

experience, or any reports on file with the U.S. Department of Labor under the Labor Management Reporting and Disclosure Act, it is well established, based on the cases cited above, that such structural formalities are not prerequisites to labor organization status within the broad meaning of Section 2(5). Indeed, even a total lack of any formal structure does not foreclose a finding of labor organization status. It is not uncommon for nascent labor organizations to lack structure. *Yale New Haven Hospital*, supra at 363. See also *Butler Mfg. Co.*, 167 NLRB 308 (1967); *Dittco, Inc.*, 126 NLRB 135 fn.2 (1960).

The record demonstrates that the Petitioner is a newly formed organization, in which employees participate and which exists for the purpose of representing the Employer's employees. Further, the Petitioner's intended purpose is to negotiate with the Employer over wages, hours, and other terms and conditions of employment. Thus, the Petitioner falls within the definition of Section 2(5) of the Act.

II. Unit Placement

A. Overview of Employer's Operations

The Employer is engaged in the business of manufacturing and processing steel plate and coil products from scrap metal at its Portland, Oregon Facility. The process begins by using electric arc furnaces to melt down scrap metal and cast the molten metal into approximately 35-ton slabs. The slabs are then reprocessed and eventually rolled into either plate or coil for eventual sale.

The Employer has separate administration and employee resources buildings where its administrative offices are located. The parties have stipulated that the clericals who work in the administrative offices are office clericals and, thus, are excluded from the unit. All employee personnel records are kept in the employee resources building.

Within the "gate" of the Employer's Facility and a couple of hundred feet from the administration building, the Employer devotes 150 acres and three buildings to housing the majority of its P&M employees. The largest of these buildings is the mill. It is divided into what appears to be six departments: steel making, rolling, shipping, central maintenance, products and planning departments.

Also located within the gates are its central services building and a building housing the four sample burners. The central services building houses the tech services and stores departments. The parties have stipulated to the exclusion of the tech employees. However, the parties dispute the placement of nine mechanical testers, who are located in the tech services department and who work in the tech services building. With regard to the stores departments,

an administrative assistant, carpenters, stores clerks and others are located within that department.

The building housing the four sample burners is located between the mill and the central services building. Although the sample burners are in a separate building, they report to tech services.

There is also a parking lot located outside the gate and rail spurs leading out of the plant. Two miles away is the Employer's heat treatment facility where the heat treatment department is located. The parties stipulated to the inclusion of the P&M employees working in this off-site heat treatment facility.

The steel making, rolling, shipping, tech services, stores, maintenance and heat treatment departments have their own managers with offices located off the production floor.³ Also located in these department offices are "general foreman" and there are "foreman" who located on the plant floor.

Production employees generally work a 12-hour shift, from 7:00 a.m. to 7:00 p.m. The record is unclear with respect to what days or rotation schedule production employees work. The Employer staffs maintenance employees on three 8-hour shifts, from 7:00 a.m. to 3:00 p.m., from 3:00 p.m. to 11:00 p.m. and from 11:00 p.m. to 7:00 a.m. on a four day on and four day off schedule. If a holiday falls on a four-day work schedule, the maintenance employees are expected to work that holiday.

A. Unit Placement of the Clericals

As detailed below, I find that the four disputed clerical positions should be included in the unit because they are plant clericals and share a sufficient community of interest requiring their inclusion in the unit of P&M employees. The clericals in dispute are six AAs, one Inventory Coordinator ("IC"), two database administrators ("DAs"), and two to four shipping clerks.

1. Administrative Assistants (AAs)

One AA is located in each of the following six departments: steel making, rolling mill, shipping, maintenance, central services/stores⁴ and heat treatment departments.⁵ The six AAs basically perform the same functions: they generate reports on the previous day's production, keep track of delays, schedule, produce data reports for their respective departments and file the reports and schedules. The record is not clear as to the specifics of the production and delay reports and of the schedules. The record does not detail the AAs' specific role in generating

³ The record is silent as to whether the other departments have separate managers.

⁴ The parties stipulated to the inclusion of this department into the unit.

⁵ The divisional engineering coordinator in steel making is also referred to in the record as the AA. I shall refer to this person as an AA.

those reports and schedules other than that the AAs are significantly involved in that process.

The AAs also generate time sheets for employees or foremen to fill out and work with employees to correctly identify times worked. They also have their own office and desk and work on their own computers. The AAs work eight-hour shifts, generally from 5:00 a.m. or 6:00 a.m. to 1:00 p.m. or 2:00 p.m., Monday through Friday, and report directly to their respective department managers. The offices where the clericals at issue work are closed on holidays. The AAs receive a wage scale at the grade 4 level; the lower end of the 1 through 17 wage/scale system maintained by the Employer for P&M employees.⁶

The AAs have some contact with unit employees. However, the record does not detail the full nature and extent of this contact. The record does reveal that the AAs' contact mostly consists of checking time sheets and production figures with production employees if there is any discrepancy. The record also indicates that the maintenance department AA attends weekly maintenance/crew meetings to take notes (or rotates with unit employees in taking notes at those meetings). At these meetings, the maintenance department AA is given five minutes to report on what other committees are doing and to inform the crew (maintenance employees) of the progress on other activities such as the annual company picnic, a Facility-wide affair.

Regarding interchange, about two or three years ago, the current steel making AA transferred into that position from the corporate engineering department when the Employer downsized and eliminated the latter department. Other than that transfer, in the last 10 years, there have been no other transfers into AA positions and two voluntary transfers from AA positions to office clerical positions.

The Employer does not have a cafeteria and AAs generally eat upstairs in the mill where a conference room/lunch room is located. P&M employees eat in lunchrooms located on the P&M floor. The exact locations for P&M employee lunchrooms or areas are unspecified in the record.

AAs are not required to wear protective clothing, which unit employees are required to wear. Because of the need for protective clothing, unit employees are issued lockers to store their clothing in. It is unclear whether AAs or other office workers are issued lockers. In any case, it appears that employees, who typically work out of an office, do not use lockers.

As the Board has stated, "the distinction between office clericals and plant clericals is not always clear." *Hamilton Halter Co.*, 270 NLRB 331 (1984). The test generally is whether the disputed clericals' duties are related to the production process (plant clericals) or related to general office operations (office

⁶ Grades 13-17 are managerial grades.

clericals). Typical plant clerical duties are timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and order supplies. **Hamilton Halter Co.**, supra. In contrast, typical office clerical duties are billing, payroll, phone, and mail. **Dunham's Attleisure Corp.**, 311 NLRB 175 (1993); **Mitchellace, Inc.**, 314 NLRB 536 (1994); **Virginia Mfg. Co.**, 311 NLRB 992 (1993), and **PECO Energy Co.**, 322 NLRB 1074 (1997).

Plant clericals are customarily included in the production and maintenance unit because they generally share a community of interest with the employees in the plant-wide unit. **Brown & Root**, 314 NLRB 19 (1994). Factors relevant to a determination of community of interests include: the degree of functional integration; common supervision; the nature of employee skills and functions; interchange and contact among employees; and general working conditions and fringe benefits.

The AAs' duties involve keeping production related records, entering production data into the Employer's computer system and performing other similar work in connection with plant production. AAs are located in the plant and away from office clericals. The AAs, in the course of carrying out their duties, have regular contact with unit employees. The AAs also share common supervision, receive the same benefits and fall in the same wage/grade system as unit employees.

In view of the foregoing and the record as a whole, I find that the AAs are plant clericals who share a sufficient community of interest with unit employees. Consequently, I shall include them in the unit.

2. Inventory coordinator ("IC")

The parties disputed the placement of one IC who is located in the steel making department and works an eight-hour shift, generally from about 6:00 a.m. or 7:00 a.m. to 2:00 p.m. or 3:00 p.m., Monday through Friday. Her pay scale is at a grade 5 level. She shares offices with the department manager, the general foreman and the steel-making department AA.

The record is somewhat vague on her duties, but her duties include generating time sheets, typing, filing and performing other functions similar to that performed by the AAs as well as performing inventory monitoring. In regard to her inventory function, she tracks inventory as it is consumed in the manufacturing and production process. The IC is also involved with records receivables so that the material used can be shown on a daily or monthly basis. In performing her inventory duties, the IC walks out onto the production floor to visually identify products. The amount of time she devotes to her visual identification duties is not noted in the record. However, she spends most of her time in her office, off the production floor, performing her duties. The record is somewhat unclear as to whom she reports, but she is ultimately responsible to

the department manager who also is responsible for oversight of P&M unit employees.

In sum, the IC's clerical functions, including inventory work, are related to the production process, which requires her to have regular contact with unit employees. Additionally, she shares a community of interest with unit employees in terms of common supervision, benefits and the Employer's wage/grade system. In view of the above and the record as a whole, I find that it is appropriate to include the IC in the unit as a plant clerical. See ***Amcar Division, ACFI, Inc.*** 210 NLRB 605 606 - 607 (1974); ***Jacob Ash Co.***, 224 NLRB 74 (1976).

3. Database Administrators (DAs)

The two DAs report to the shipping department, although one DA is located in the rolling mill department office while the other is located in the shipping department office with the shipping clerks and the shipping department AA, manager and general foreman. The record is not clear regarding who is in the rolling mill department office with the DA located there.

DAs keep up the Employer's database to make sure it is accurate. They are not required to have computer training, but they work extensively with computers. Their work appears to involve verifying computer records with production records to make sure the production figures in the computer were entered properly. The record indicates that the production records throughout the facility are not all entered into the same computer system. However, it is unclear whether the DAs check all the different computer systems or just those in the shipping and rolling mill department.

In performing their duties, the DAs may spend up to 25 percent of their time on the production floor checking production data with production supervisors and P&M unit employees; however, that percentage varies depending on how well the figures initially are recorded. The record in this proceeding does not indicate an average or median percentage of work time when the DAs are in contact with unit employees; nor does the record specify exactly what is checked when they are on the floor.

The shipping department manager administers any discipline issued to the DAs. However, the record is silent as to their day-to-day supervision. They are paid at the grade 6 or 7 levels in the Employer's wage/grade system, which is applicable to all the Employer's employees at the Facility.

As with the other clerical employees at issue here, the DAs clerical duties are related to the production process. The DAs also share the same fringe benefits and supervision as unit employees. At least one DA also shares the same office space with the shipping clerks and with an AA whom I have included

in the unit. The two DAs also have regular contact with P&M unit employees during work time for the purpose of verifying records related to the production process. In view of the above and the record as a whole, I shall include the DAs in the unit as plant clericals. ***Hamilton Halter Co.***, supra.

4. Shipping Clerks

Two to four shipping clerks are located in the shipping department office, along with the shipping department manager, general foreman, a database administrator, and the shipping department AA. Shipping clerks make sure that the entire shipments of Employer product are correctly invoiced and billed to the correct customer. The record is not clear whether the shipping clerks actually bill customers but they appear, at the very least, to input the information into the Employer's system to insure that such billing is eventually, correctly performed. The shipping clerks are also responsible for correctly identifying the product to be shipped and for attaching the correct weight to that shipment. Generally, the shipping clerks interact with the first line foreman on the floor, but they also interact with loaders and shippers on the floor. Loaders and shippers are included in the unit, but the record neither describes the duties of these classifications nor the specifics of their interactions with the shipping clerks.

The record does indicate that a production coordinator located in the heat treatment department also performs the functions performed by the shipping clerks. However, the production coordinator's shipping clerk functions are not his only functions and since the heat treatment department is a much smaller department, he does not perform shipping clerk functions for the same period of time the shipping clerks dedicate to such functions. The parties have stipulated to the inclusion of the production coordinator.

Also indicated in the record is that the rail scale clerk, located in a different section of the shipping department, keeps similar records for billing and he reports to the same supervisor as the shipping clerks. However, the rail scale clerk is more involved with assisting switch crews in transporting and managing products in and out of the plant. The amount of time the rail scale clerk devotes to billing records is not indicated in the record. As with the production coordinator, the parties have stipulated to the inclusion of the rail scale clerk into the unit.

The shipping clerks work a day shift and from time to time on later afternoon shifts, but no more specific information on their shifts is given. They are paid at the grade 4 or 5 levels. The shipping department manager makes the ultimate decision regarding their discipline.

The Petitioner would exclude the shipping clerks as lacking a sufficient community of interest with unit employees to require their inclusion because they work a large portion of their time with supervisors, in the same office as clericals

and have little contact with unit employees. However, the duties of the shipping clerks are directly related to unit work and similar to work performed by other clerical unit employees. In particular, the shipping clerks essentially finish off a few functions prior to the shipment of the product. Those functions include properly identifying the product to be shipped and insuring the correct weights are attached to the shipped products. Additionally, the shipping clerks share a sufficient community of interest with unit employees over such matters as common supervision, wage structure and benefits. In light of the above and the record as a whole, I find that the shipping clerks are plant clericals and that they share a sufficient community of interest with unit employees. Accordingly, I shall include them in the unit. See *Risdon Manufacturing Co.*, 195 NLRB 579, 581 (1972).

B. Unit Placement of Sample Burners & Mechanical Testers

The Petitioner seeks to include the four sample burners and the nine mechanical testers in the unit. The Employer contends these employees lack a sufficient community of interest to warrant their inclusion in the unit. I find that the record establishes that the sample burners and the nine mechanical testers do not share a sufficient community of interest with unit employees to warrant their inclusion. Accordingly, I shall exclude these two classifications from the unit.

Below, I will first set forth what the record reveals regarding the sample burners and the mechanical testers' terms and conditions of employment. Second, I will set forth the applicable law and my findings and conclusions in this regard.

1. Terms and Conditions of Employment

The record reveals that the four sample burners are located in a building separated by 20 yards from the central services building and connected by a conveyor belt to the rolling mill. It appears that no unit employees generally work in the building where the sample burners are located. ****

A conveyor belt transports samples from the rolling mill to the sample burners. A sheerer, located on the production floor in the rolling mill department and a classification that the parties stipulated into the unit, cuts the samples that are conveyed to the sample burners. Sometimes, the shipping department will also deliver product to the sample burners to burn off a sample. Sample burners use torches, saw bands, plasma arcs and grinders to prepare samples. They also identify samples by speaking with the sheerer using a radio. The record is not clear regarding how the samples proceed from the sample burners' work area to the testing lab in the central services building. However, it appears the mechanical testers pick the samples up from the burners. In any event, as a

matter of routine, sample burners cannot stop the production process. Rather, they prepare the samples for testing but do not do the actual testing.

Sample burner positions are often filled by temporary employees from an outside agency and later progress into permanent employee status over time. The record does not elaborate on the relationship between the supplier of the temporary sample burners and the Employer. The record also does not elaborate on whether any of the sample burners are currently carried by the Employer as temporary employees. In any event, sample burners, generally progress into mechanical tester positions, which receive a higher wage in the Employer's wage/grade system. Unlike P&M unit employees, sample burners are permitted to take a vacation day or less at a time.

With respect to mechanical testers, the record reveals that they test samples of the Employer's product. When necessary, the mechanical testers use a truck to go to various sites to collect samples from the sample heat treatment site, shipping department, coil yard, sample burning pit and other areas, where P&M unit employees work. It appears that the purpose of picking up the samples, at these various locations, is to test the product at various stages of the production process. These collections occur from rounds every 2 hours to twice a shift. The record reveals that sample burners assist mechanical testers in gathering the samples, but nothing more was proffered about such assistance.

In the shipping department, if a sample is too heavy, the mechanical testers will use a forklift and/or crane to transport the samples or have a unit employee in the shipping department use the forklift and crane to move the samples to the truck. Sometimes a maintenance generalist employee, whom the parties stipulated into the unit, will move the samples from the shipping department and deliver them to the mechanical testers. The maintenance generalist also retrieves the samples after testing is completed and returns them to the stores or the shipping department.⁷ The purpose for returning the samples is not abundantly clear in the record.

A Petitioner witness testified that mechanical testers spend around two hours a day collecting samples. He also testified that mechanical testers communicate with unit employees over the radio about the samples that were collected, but he did not give the amount of time the mechanical testers spend on the radio talking to unit employees. Despite the foregoing, an Employer witness testified that mechanical testers spend only one percent of their time in contact with unit employees.

Once the mechanical testers have gathered the samples, they will test the material using tensile machines and the like to make sure the material measures

⁷ The maintenance generalist is part of the maintenance department. The record does not further identify his duties.

up to specifications. The mechanical testers then enter the results of tests into a computer. If the samples fail the tests, the results of those tests proceed to the metallurgist who, in turn, would decide what to do with the material from that point forward. In sum, mechanical testers, like the sample burners, do not have the authority to shutdown production on their own. Rather, their work appears to get a process rolling that may lead to that result.

Both the sample burners and mechanical testers report to a supervisor, who reports to the tech services manager. Neither the supervisor nor manager supervises employees stipulated into the unit.

Both the mechanical testers and sample burners work a 10-hour, four day on and four day off schedule, with differing individual start days. As noted above, maintenance employees also work a 4-day workweek. Sample burners can work up to 12 hours a day, which matches the schedule of the rolling mill workers who are included in the unit. Sample burners are a grade 4 in the Employer's wage/grade system. Mechanical testers are on duty 24 hours a day, 7 days a week and are paid at the wage of a grade 6. Unlike P&M unit employees but like the sample burners, mechanical testers are permitted to take vacation leave for a day or less.

There was some discussion about cross training of sample burners in unit work. However, cross training is not the norm for this Employer and it appears that only one sample burner was cross-trained and this was on his own initiative. Both mechanical testers and sample burners use the lunchroom in the tech services department, although they occasionally will use the lunchroom on the production floor to access vending machines. During mill shut down times, mechanical testers can volunteer to help out unit employees, but such shut downs occur for one week, twice a year at most.

The record indicates that the Employer employs a classification of "quality assurance employees" located in the technical services department where the sample burners and mechanical testers are employed. These "quality assurance employees" have been excluded from the unit by stipulation. The record is short on the details regarding the work of these employees. On the other hand, the Employer employs "quality inspectors" located in various P&M departments. These employees work on the production floor and are included in the unit by stipulation. The record is also unclear as to the extent and nature of their duties.

2. Applicable Law, Findings and Conclusions

In deciding the appropriate unit, the Board first considers the Union's petition and whether the unit sought is appropriate. **P. J. Dick Contracting**, 290 NLRB 150 (1988). The Board, however, does not compel a Petitioner to seek any particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the

most appropriate unit for collective bargaining. **Black & Decker Mfg. Co.**, 147 NLRB 825, 828 (1964). There is nothing in the statute, which requires that the unit for bargaining be the "only" appropriate unit, or the "ultimate" unit, or the "most" appropriate unit, the Act only requires that the unit be "appropriate." **Morand Bros. Beverage Co.**, 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951); see **Staten Island University Hospital v. NLRB**, 24 F.3d 450, 455 (2d Cir. 1994); see also **American Hospital Assn. v. NLRB**, 499 U.S. 606, 610 (1991), interpreting the language of Section 9(a) as suggesting that "employees may seek to organize 'a unit' that is 'appropriate' not necessarily the single most appropriate unit." The Board generally includes quality assurance/control employees in a P&M unit when the petitioner seeks such. See ***Keller Crescent***, 326 NLRB 1158 (1998) and ***Blue Grass Industries***, 287 NLRB 274 (1987); cf. ***Lundy Packing***, 314 NLRB 1042 (1994), enfd. denied 68 F.3d 1577, 150 LRRM 2705 (4th Cir. 1995), cert. denied 116 S.Ct. 2551 (1996); ***P. Ballantine & Sons***, 141 NLRB 1103, 1107 (1963); accord: ***Ballantine Packing Co.***, 132 NLRB 923, 925 (1961). In the end, the issue of the unit placement of the sample burners and mechanical testers turns on whether they share a sufficient community of interest with P&M unit employees to warrant inclusion in the unit. ***Blue Grass Industries***, supra.

The record reveals insufficient evidence to establish that the sample burners and mechanical testers share a sufficient community of interest with P&M employees or whether their community of interest sufficiently lies with the excluded quality assurance employees. In particular, the record was not developed with regard to the functional integration or interchange, if any, of the mechanical testers and sample burners with quality assurance employees whom the parties stipulated out of the unit. However, the record is clear that the sample burners and mechanical testers work in the same department and fall under the oversight of the same departmental management. On top of this, there is the issue of the temporary status of sample burners, which was not fully developed in the record and which is relevant to a determination of the unit placement of these employees.

In view of the above and the record as a whole, I find that the record reveals insufficient evidence to establish that the sample burners and mechanical testers share a sufficient community of interest with unit employees. Accordingly, I shall exclude these two classifications from the unit.

III. The Status of the Foremen

The record reveals that the Employer employs employees in the classification of foreman and general foreman. However, the parties have not taken a position regarding the unit placement of these individuals and the record sheds little, if any, light on their duties and responsibilities. The record indicates that "foremen" work closely with unit employees and that "general foremen" share an office with some of the plant clericals but beyond that, not much more is

known. A reading of the record leaves the impression that the parties' had no dispute with the classification of foremen and that they may be the "supervisors" the parties stipulated as an exclusion from the unit.

However, Board law holds that a party, who contends an individual is a supervisor as defined under Section 2(11) of the Act, has the burden of establishing such status. *NLRB v. Kentucky River Community Care Inc.*, 121 S.Ct. 1861 (2001). Since the parties and the record fail to address the statutory supervisory status of "foreman" and "general foremen," I shall permit them to vote subject to challenge.

IV. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(a) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

In the steel making department:

Administrative assistant; inventory coordinator; bricklayer; casting helper; charge, furnace, ladle, North Yard, South Yard, slab/melt, and lead crane operators; electricians; lead electricians; equipment operator—scrap; first, second, LMF and general helpers; hand scarfers; ladle tenders; LMF operators; maintenance generalists; melt helper; milling machine operators; millwrights; lead millwright; casting, cleaner/coater, LMF/degasser and lift truck operators (including the slab yard lift truck operator); melt department; designer; drafter; slab burners; and operating and process technicians.

In the rolling department:

The administrative assistant; North Yard crane operator; electricians; lead electricians; finish relief and heater employees; hot bed

markers; HVAC technicians; instrument repair technicians; leveler/down coiler; maintenance generalist; mill relieves I; millwrights; lead millwrights; operating technician I, II, and IIIs; operators IV-Hi; changing gantry, leveler, end shear, rotary edge shear and parting shear operators; operator/mechanic; designer and quality inspectors.

In the Shipping department:

The administrative assistant; database administrators; shipping clerks; clerk rail scale; coating applicator-wheel; crane chaser-shipping; crane operator/chaser retail-shipping; crane operator-shipping; crane operator-wheelabrator; equipment operator-scrap; switch crew; loader-shipping; material handler-coil yard; plate burners; quality inspectors; relief loader-shipping; and utility person-transportation.

In the central services/stores department:

Carpenter/painters; stores clerk; apprentice electrician; machinist; lead machinist; maintenance generalist; material handler-maintenance; millwrights; millwrights apprentices; lead millwrights; and operator/mechanic.

In the heat treating department:

Electrician; heat treater/operator tech III; heat treat loaders/material handler; millwrights; production coordinator; and quality inspector.

In the environmental safety department:

Environmental specialist and safety technician.

Excluded:

Department managers and supervisors, including general supervisors, coordinator, coil yard production coordinator, shipping coordinator, maintenance coordinator, mechanical maintenance coordinator, electrical, all accounting department employees, administrative department employees, employee resource department employees, all professional employees, all sales and marketing department employees, ICS, production planning purchasing/traffic and control department employees, quality assurance employees, sample burners, mechanical testers, technical supply/support coordinator, technical entry coordinator, quality control records administrator and all office clerical employees.

V. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Northwest Metal Producers Association. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

1. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

2. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office in Portland, Oregon, an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before November 1, 2002. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (503) 326-5387. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

3. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

4. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on November 8, 2002. The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 25th day of October 2002.

Catherine M. Roth, Acting Regional Director
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